

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**August 5, 2015**

This meeting was called to order at 6:00 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Russell Moore, Scott Spendlove, William Whetstone, and Necia Christensen

**Those Absent:**

Sandy Naegle

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Nichole Camac

**WEST VALLEY CITY LEGAL DEPARTMENT**

Nicole Cottle, CED Director  
Eric Bunderson, City Attorney  
Brandon Hill, City Attorney  
Claire Gillmor, City Attorney

**AUDIENCE:**

Approximately nine (9) persons were in the audience.

## **NON-CONFORMING USES**

**B-7-2015**

**Timothy & Louise Gutierrez - Non Conforming Use Determination**

**4904 West 4100 South**

**R-1-8 Zone**

### **REQUEST:**

Timothy and Louise Gutierrez have submitted an application with the West Valley City Board of Adjustment requesting a non-conforming use determination for an existing multiple family dwelling in the R-1-8 zone. The property is located at 4904 West 4100 South. The applicant is requesting that the Board determine the non-conforming status of this dwelling as it relates to the multiple family use in an R-1-8 zone.

### **BACKGROUND:**

West Valley City General Plan recommends low density residential land uses.

The subject property is located at 4904 West 4100 South. The property is presently zoned R-1-8 and is approximately .17 acres in size. The property currently has an existing dwelling with living space on the main floor and a finished basement that is being rented. The property is not part of a formal subdivision, but it is located immediately to the south of the Sundown Subdivision and west of existing multiple family zoning.

The applicants have been participating in the good landlord program and have had a business license for the rental units since that program was initiated. When recently applying for a business license, the property was flagged as being a multiple family unit. In order resolve this issue, the applicants are requesting that the Board determine the structures non-conforming status as a multiple family dwelling in an R-1-8 zone.

According to Salt Lake County records, the dwelling was constructed in 1935. At the time the original home was constructed, zoning did not exist in this part of the County. Zoning first appeared in 1965 with the subject property being zoned R-2. At a subsequent date, the property was rezoned to the R-1-8 zone.

To help the Board in its determination of this case, the applicant has provided two written letters outlining the history of this property. The letter also provides a history of the rental units associated with the single family dwelling. In addition, the applicants have submitted information from the Salt Lake County Assessor's Office and letters from residents who have lived in the area for many years.

The appraisal cards dated 1935, 1942, 1957 and 1967 indicate that the basement was finished. Although these reports are not specific as to the improvements, what is clear is that the basement was completed at the same time the home was constructed. The

applicants have also submitted some correspondence from Rocky Mountain Power which states that the basement unit #B has had a separate meter on or before 1967.

- To conclude, the applicant has submitted a request for the Board to determine whether the existing dwelling with finished basement apartment located at 4904 West 4100 South is legal and can remain as constructed. The following summation may help:

**ORDINANCE SUMMARY:**

Section 7-18-106(1) of the West Valley City code reads:

All matters regarding the non conforming use of building and land shall be determined by the Board. Upon application, after public hearing on the matter, the Board shall determine if the use or building is non conforming with respect to current provisions of this Chapter.

**Steve Lehman presented the application.**

**Discussion:** William Whetstone asked when the property was zoned 'R-1-8'. Steve replied that West Valley City was incorporated in 1980 and the zoning change occurred after that. He indicated that he has received calls from residents that received notification and most were comfortable with the change. Steve stated that there was one gentleman, Mike Rigdon, who expressed opposition to the application because he is concerned other single family homes in the area will convert to duplexes as well.

**Applicants**

Timothy and Louise Gutierrez  
8903 S Boulder Wash Lane  
West Jordan, UT 84081

**Louise Gutierrez**

Louise Gutierrez stated that she and her husband were friends with the previous owner who always rented the home as a duplex. She indicated that Rocky Mountain Power has the home listed as two units. Ms. Gutierrez stated that neighbors in the area have submitted letters and verified that the home as always acted as a duplex. She indicated that the interior of the home is separated and has never functioned as a single home.

**Timothy Gutierrez**

Timothy Gutierrez stated that he moved into the neighborhood in 1968 and many homes in the area were used as duplex or 4-plex units during that time, including this one.

**Discussion:** Russell Moore asked when the applicant purchased the property. Ms. Gutierrez replied in 2007. Mr. Moore asked if there is any interior connection between the downstairs unit and the upstairs one. Ms. Gutierrez replied no and indicated they each have a separate entrance as well.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Moore moved for approval.

Mr. Spendlove seconded the motion.

**Discussion:** Scott Spendlove stated he feels the applicants have provided adequate proof indicating that this home has always been used as a duplex and should be granted a non-conforming use.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

**Motion Carries - B-7-2015– Unanimous Vote**

## **VARIANCES**

### **B-8-2015**

#### **LDS Seminary Variance**

**5775 W 4100 S**

**A Zone**

#### **REQUEST:**

Mr. Mike Davey with BHD Architects, representing The Church of Jesus Christ of Latter-day Saints, has filed a request with the West Valley City Board of Adjustment seeking three variances. The first variance is from Section 7-6-207 which requires that the front setback in the A zone be 30 feet. The applicant is seeking a variance of 10 feet for a 20-foot setback. The second and third variances are from Section 7-6-208 which requires that the rear setback in the A zone be 30 feet and that the rear setback for an accessory structure be 10 feet. The applicant is seeking variances of 20 feet and 5 feet respectively.

#### **BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as Parcel Numbers 20-02-200-031 and 15-02-200-032. The property is zoned A, and accommodates an LDS Seminary building that serves students at Hunter High School. The current building will be demolished as part of the 4100 South widening project for the Mountain View Corridor. The project will adjust the front property line back 43' to the south.

- ☐ In order to get a new building and the associated parking to work on the site, the applicant has decided to pursue a variance. The first two variance requests are to allow the building to be 20 feet from the front property line and 10 feet from the rear property line, instead of the required 30 foot front and rear yard setbacks. The side yard setbacks for the building would meet City Code. The other variance is for a small accessory building that would be 5 feet from the rear property line, rather than the required 10 foot setback.
- ☐ The applicant has provided a site plan illustrating the layout for the new building and accessory structure. In addition to the site plan, the applicant has provided answers to the variance criteria as it relates to this application.

### **ORDINANCE SUMMARY:**

Section 7-6-207 of the West Valley City Land Use Development and Management Act requires the front yard setback to be 30 feet.

Section 7-6-208(1) of the West Valley City Land Use Development and Management Act requires the back yard setback to be 30 feet for main buildings, and 10 feet for accessory buildings.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

**Steve Lehman presented the application.**

**Applicant**

Lafe Harris  
BHD Architects  
65 E Wadsworth Park Drive  
Suite 205  
Draper, UT 84020

**Lafe Harris**

Lafe Harris stated that these variances are necessary due to the expansion of 4100 S and the construction of the Mountain View Corridor in the area. He indicated the seminary building doesn't need to be as large as it once was and will now operate as a four classroom building.

- 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Harris stated that because the road right-of-way moves 43' into the church property, it creates a hardship for the Church to construct a replacement seminary building on a site that has been reduced in size by the road widening. The reduced building setbacks will still carry out the general purpose of the Zoning Ordinance because the seminary site plan setbacks will be consistent with the existing seminary building's setbacks and will have adequate and attractively landscaped setbacks.

- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Harris stated that to be able to fit on the smaller site, the Church requires some variances to the building setbacks. The property is zoned "A" and the request is for the front building setback to be reduced from 30' to 20', that the rear building setback be reduced from 20' to 10', and that the rear accessory building setback be reduced from 10' to 5'.

- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Harris stated that the only feasible option to make the property usable is to decrease the building setbacks so a new seminary can be constructed on the site. The Church is designing a custom seminary building that is less deep than other seminary buildings so it can fit on the smaller site.

4. **The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mr. Harris stated that the 20' front building front setback is consistent with the commercial zoning across 4100 South Street and will not appear out of place in the surrounding area.

5. **The spirit of the zoning ordinance is observed and substantial justice done.**

Mr. Harris stated that the zoning ordinance requires a 20' landscaping area along 4100 South. The requested 20' front building setback will observe this requirement.

**Discussion:** William Whetstone clarified that the existing seminary building already has a variance for setbacks. Steve Lehman replied that the building was reviewed in 1989 but the Board of Adjustment determined that the access to the school (to the west of the seminary building) was a second street thus making the property a corner lot and not needing setbacks. Steve stated that ordinances today would not consider the access into Hunter High a secondary street so staff felt it necessary for the applicant to get variances. Mr. Harris stated that the parking lot is in the same place and the building will also be in the same place. He stated that he feels it has always worked for the past and will continue to work in the future.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Spendlove moved for approval.

Mr. Whetstone seconded the motion.

**Discussion:** Russell Moore stated this is a reasonable request. He stated that if the variances were not granted, the high school would lose the ability to have seminary classes on site. Scott Spendlove stated that the hardship is out of control of the property owner since UDOT is proposing the changes to the street. William Whetstone indicated that the seminary building doesn't meet setback requirements currently and there are no issues.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

**Motion Carries - B-8-2015– Unanimous Vote**

## **APPEALS**

**B-5-2015**

**Richard Allen Appeal  
2940 West 3650 south**

### **REQUEST:**

Mr. Richard Allen, representing the property owner has filed an appeal with the West Valley Board of Adjustment. The appeal is regarding a decision of the West Valley City Zoning Administrator denying a request for reasonable accommodation related to an assisted living facility to be located at 2940 West 3650 South.

### **BACKGROUND:**

**On December 10, 2014**, the Planning Commission approved conditional use application C-70-2014. This application was for an assisted living facility located at 2940 West 3650 South.

**On April 17, 2015**, Mr. Allen submitted a request for a Reasonable Accommodation under the Federal Fair Housing Act. This request was intended to reduce the overall size and height of the approved facility granted by the Planning Commission in December 2014, thus making the building more affordable.

**On April 21, 2015**, a new conditional use application was submitted for an assisted living facility. Said facility was lower in height and density.

**On May 21, 2015**, the City Zoning Administrator replied to Mr. Allen's request for a reasonable accommodation. The request was denied by the Zoning Administrator. Reasons for the denial are outlined in her letter dated May 21, 2015.

**On May 27, 2015**, the new conditional use application was reviewed by the Planning Commission. The application was continued to the June 24, 2015 meeting.

**On June 1, 2015**, the applicant submitted an appeal of the Zoning Administrator's decision to deny the reasonable accommodation request. The application was placed on the August 5, 2015 Board of Adjustment meeting agenda.

**On June 24, 2015**, the Planning Commission continued the application indefinitely based on the appeal application that was submitted to the Board of Adjustment.

### **ORDINANCE SUMMARY:**

An appeal may be made to the Board of Adjustment by the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance.



**Section 7-18-105(4)**

After hearing the appeal, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made. The Board also has the ability to continue the application for additional information.....

**Section 7-18-105(6) Appeals to the Board of Adjustment**

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission or agency or to decide in favor of the appellant.

After reviewing these sections of City ordinance, the Board shall recognize that the person or persons making the application will have the burden of proving that an error was made by the Community Development Department.

**ALTERNATIVES:**

In regards to B-5-2015, the Board of Adjustment may find the following:

1. If the Board finds that the applicant does not demonstrate that an error was made, and/or that the applicant has failed to meet the burden of demonstrating such an error and that the decision of the Zoning Administrator correctly administered or interpreted the matter in question, the Board of Adjustment shall deny the appeal which would affirm the decision of the Zoning Administrator to deny the reasonable accommodation request.
2. Should the Board find that the Zoning Administrator erred in the administration or interpretation of the reasonable accommodation request, the Board should find in favor of the appeal.
3. Continue the application in order to allow further consideration or evaluation on any particular matter of the proposal.

*The following minutes are verbatim*

**Necia Christensen**

Tonight we are also here for our third different kind of case. This is an appeal pursuant to application B-5-2015. As an appeal authority I want to remind the Board and participants, and I'm reading this because I wanted not to get it wrong, that we are acting in a quasi-judicial category... or capacity...

not category. We will accept any and all information that the parties would like us to hear or include in the record. We will limit our dialogue with the parties to clarifying questions. We have our legal counsel here with us and we will refer to her for any procedural clarifications we will need. So this is how it will work. The order is that we will hear from the applicant first, then we will hear from the City, and we'll follow that by any rebuttal by the applicant and the City as needed. Mrs. Cottle would you please explain why we are hearing the matter and from a procedural perspective.

**Nicole Cottle**

Sure thank you and I'll be short, Madam Chair. This is an appeal of a Zoning Administrator's decision and as the Board is aware, when decisions become necessary from our land use code about matters that are not explicitly set forth or discussed in that zoning code, the Zoning Administrator is, by virtue of that code, explicitly vested with authority to make those decisions. In turn, the applicant asking for one of those Zoning Administrator decisions also then has the opportunity to appeal that decision to this Board in the format that the Chair just set forth. By way of reminder, the burden of proof in this case lies with the applicant in regards to his appeal.

**Necia Christensen**

Ok so will the applicant step forward and present your case please?

**Richard Allen**

Ladies and Gentleman, I'm Richard Allen, Attorney for the Audie Leventhal Irrevocable Trust who is the applicant in this case.

**Necia Christensen**

Would you give us your address as well?

**Richard Allen**

Okay, my business address is PO Box 662 Lehi, Utah 84043.

**Necia Christensen**

Thank you sir.

**Richard Allen**

In this case I've filed a notice of appeal with, that sets out most of the arguments that we intend to be considered. I assume you've read that and I don't have to read it in the record like the last one I assume. I would like to just address several issues relating to the application. The first thing I'd like to note is this is an application under the Federal Fair Housing Act. It's governed by that act, not City ordinances and so that's what you're looking to decide is whether the City Zoning Administrator should have approved the request for reasonable accommodation under the Federal Fair Housing Act. That act, one of the requirements is to impose an affirmative duty on a City to grant a reasonable accommodation if it's necessary and reasonable in order for disabled persons to be able to live in a location or housing of their choosing. In the case of facilities like the one proposed in this case, which is an assisted living facility, the people can only live in a location where they're provided

services. They don't have, they can't live independently and so in those cases, what the federal courts have done is they have looked at necessity based on whether or not the accommodation is necessary in order to allow this type of facility to be able to operate at this location. And so the issue becomes, is the accommodation necessary? And there are many federal cases dealing with this issue and most of them come down to whether or not the accommodation is necessary in order for the facility to be built or in other words whether it's economically feasible to build the facility without the accommodation. And as I've set out in the notice of appeal and in the original request for reasonable accommodation, it is our position that a, I guess one thing I ought to back up and point out is what we've asked for in this case is an accommodation to one requirement of the central city zone and that is the minimum 5 story height requirement. The thing that's interesting and troublesome in this case is that there's really two height limitations. One is since we sit on 3650 south, within the first 100 feet the height limitation is a minimum of 200, I mean 2 stories or a maximum of 3 stories. In my reading of the ordinance, as it was in place when we started this process, is what it says is if a buildings within 100 feet, it has that height limitation. It then goes on to other streets and has similar requirements and then the ordinance says all other buildings have to be a minimum of 5 stories high so I think the ordinance was intended to be imposed on a per building basis and not, you have one height limitation back 100 feet and then immediately it goes to another one which requires you doing from a 2 or 3 story building to at least a 5 story building. The attorney involved that I've discussed this with came back and said no we don't agree with that interpretation and by the way we're going to change our ordinance to make it clear. And so the ordinance was changed on us after we started this process. The applicant originally filed for and obtained approval of a building that complied with this strange configuration before I became involved. And then when it obtained approval and started to do the detailed design of that facility and as soon as they started doing that and looking at the International Building Code and the requirements for a taller building, became very clear that the cost to build that kind of facility would just make it economically unfeasible to build it. And so they, we consulted and decided the best thing to do was to go back and seek approval of a 2 story building and doing that we would ask for an accommodation of the 5 story requirement even though we don't agree with that requirement, for purposes of our requests, we're assuming that's what the requirement is. There are, in our original application, we provided information on cost, what the facility could generate, and what the fees would have to be charged and those type of information to substantiate our claim that the request for reasonable accommodation was necessary. Now the City has not responded or reviewed that information at all. And so in our view, that information has to be accepted and relied on for purposes of this appeal and we think it clearly shows that the cost to build this facility would be much, much higher if it's going have to be partly 5 stories high. And what we would have to charge to recover our cost of that much more expensive building would exceed what experts tell us could be charged in this area for this type of service. And so we've provided that information. Another reason that they are, the applicant is very concerned and requesting a 2 story building is that a lot of people take the view that the Utah ordinances which really rely on the International Building Code only allow for a 2 story building. Now the consultants I guess as they looked at the contractors and that say well maybe you can comply with this International Building Code but you know they are very, very expensive requirements to do that and so that's why we're a little indefinite on that. We don't know, we've had people tell us that the State won't approve a 5 story building but they're not going to give us an advisory opinion, the only way we'll find that out is if we went through, you know, very, very significant cost to give a detailed design and then take it to

them and see whether they'd approve it or not. And that's why one of the reasons we fell back to the 2 story based on economic necessity. Now another issue of concern is safety. And that is one reason most all assisted living facilities are 1 or 2 stories high. And we have here today Dr. Leventhal, not Audie Leventhal, but his wife, who works with these type of facilities and would be involved in it and I'm going to have her take a few minutes and explain some of the safety concerns with building more than a two story assisted living facility.

**Jacqueline Leventhal**

Do I need to state my name and address?

**Necia Christensen**

Please.

**Jacqueline Leventhal**

Dr. Jacqueline Leventhal. 2215 E 5340 S Holladay, Utah.

**Necia Christensen**

Go ahead.

**Jacqueline Leventhal**

I just wanted to speak briefly on the safety concerns that I have as a medical person. I've been doing this for over 20 years, working in hospitals, primarily assisted living facilities, nursing homes, subacute facilities and I've had the misfortune of having to evacuate a facility once that was a single story facility, 200 bed, and it was a disaster. We had immobile patients, we had patients with dementia that if they're not assisted one to one they can ambulate, go out to the street, and you know it could be tragic. My understanding as well is that with Utah Fire Codes for assisted living facilities that we would have to be able to provide one to one assistance to remove the residents from the facility. Maybe you can clarify that? That would be unattainable as a...

**Necia Christensen**

We're just taking testimony.

**Jacqueline Leventhal**

Ok. The other issue I have is that if you get much above 2 stories in a facility such as this it begins to look like an institution. What we want to do here is something that is something good for the community. Something really good. We want to provide good medical care, have a physician on site to see these people, to help them you know live a dignified life. Living in a 5 story assisted living facility would not be consistent with what our dream is for this. And as a physician, it just would not be something that you could evacuate reasonably. And really that's my concern is that these patients would be at risk if there was a bioterrorism or even a fire threat that we wouldn't be able to get them out safely. Thank you.

**Richard Allen**

Just a little bit more on the economic necessity part of this issue, the Zoning Administrator made several claims relating to that that I think are not correct under the Federal Law. One is that the Law doesn't require a City to make accommodations for the disabled that gives them advantage over the non-disabled. That issue is sort of true but it misses the point. If they were independent handicap people then that may be true. But in this case these people can only live in this type of facility. They cannot live independently. Therefore if a facility that provides these services can't be built there then they can't live there and the case laws made it clear that the economic feasibility of this type of facility is the issue, addresses the issue of necessity. So if the accommodation is necessary for the provider's economic viability then it is necessary. The other point that was made is that what you're asking goes against the law because all these cases were cases where somebody asked for more residents than the law allowed. And you know in most cases, almost all of them I've dealt with, that's what you're doing with is a City has a limit that's well below the economic viability standard so you ask them to waive that so you can put enough residents in a facility to do that. But economic viability is the issue, not the number of residents. If you need more residents to be viable in this case, having a 2 story instead of a 5 story would be less residents but if you can't build a 5 story then there's no residents. And so I think that statement by the Zoning Administrator misses the point that the issue is the economic viability of the proposed facility. If it's determined that an accommodation is necessary, which is necessary for the economic viability of the provider, then the question becomes whether the accommodation is reasonable. Actually under the Law, if the applicant establishes it's necessary, it's up to the City to show that it's not reasonable. There are three things that relate to reasonability. Number one does it impose a burden on the City? Number two does it have an adverse impact on the City and administration costs? And number three, does it require a fundamental alteration to the nature of the zoning scheme. I don't believe the zoning, that the City has claimed that there's any adverse impact or financial or administrative burden, or hardship not impact. So the questions comes down to whether or not waiving the 5 story limitation on the back portion of the building is a fundamental alteration of the zoning scheme. And I think the Zoning Administrator makes a point that she believes that the 5 story minimum height requirement is a fundamental and important part of the central city zoning scheme. We disagree with that for three reasons. Number one is there is only one five story, one building that's been built since then, that's over 5 stories high and that's the Embassy Suites Hotel. You did approve a 4 story Ivory apartment building and I just saw in the news today, big news for the City, they broke ground on a 4 story medical building to be built here. So it's clear that the 5 story minimum requirement was not imposed on that building that's recently been approved, even though it's in this zone. So it looks to me that the 5 story minimum requirements been waived more than it's been enforced. If you look anywhere else, there's not like there's a lot of building and this is going to sit down below all the rest. It's going to be as tall or taller than most everything in the area. I understand that the, that's an aspiration. The other reason I don't think that it's an essential element is the fact that it has a lower limitation in the front of the building because its transitioning from residential area, excuse me, to this proposed high rise center. Part of it has to be transition and small anyway and to say all of a sudden you've hit 100 feet that building's got to go from 2 or 3 stories up to 5 stories is completely unreasonable. The third reason that I don't think the City can claim that it's really an essential element of the zoning scheme is that the City has offered on several occasions, I've attached some documentation that supports this claim and we have witnesses, we can have witnesses, people who actually were involved, who said that the City's offered on a number of occasions to waive the height limitation if the owner will give them a portion

of their property for a City park. Now if it's all that critical, why are they offering to waive it in exchange for granting them property? And if it's something that can be waived in order to acquire property, it's something that can also be waived to make this facility economically viable. And that's all I have initially to say. Want to ask questions or want them to go ahead and let me respond?

**Necia Christensen**

I think we'll let them go ahead unless you have any other witnesses to speak.

**Richard Allen**

We don't.

**Necia Christensen**

Right. I understand the City has a presentation?

**Brandon Hill**

We do, thank you Madam Chair, much appreciated.

**Necia Christensen**

Name and address.

**Brandon Hill**

Absolutely. Brandon Hill, here representing the City. My office is predictably located here at City Hall 3600 S Constitution Blvd West Valley City, UT. With me is Claire Gillmor also of the City Attorney's Office and representing the City on this matter as well. It's an honor to be before you here tonight and what we're talking about is really a fairly simple case but it's a very important case and I want to help you understand the context in which this case comes up and to understand exactly why it is that we're here tonight. Of course this building here today, we're located in the City Center Zone which is probably the single most important zone in the City. It is the downtown area of the City and it's a zone that's been around for over 10 years. The purpose of this zone was to create a recognizable downtown for West Valley City, to create a central place that is clearly downtown West Valley City where when people arrive they say yes, you're in West Valley City. This is true for all sorts of reasons for economic reasons, to create jobs, for perception reasons and to create a sense of community here in West Valley City. These are all very important issues and as Mr. Allen mentioned we did in fact have some good news this morning that you probably saw in the newspaper about Granger Medical Center coming to the City Center Zone. This is a tremendous amenity and we're going to talk a little bit more about that a little bit later on in my presentation but it demonstrates the importance of creating this downtown area, to keep companies like that home to build that recognizable downtown. Now it's important to note that the only thing we're really here talking about, the only thing that Mr. Allen is appealing here, is Mr. Leventhal's claim that the height restrictions in the City Center Zone can't be enforced against him as a matter of Law. That the Federal Fair Housing Act requires that the City waive these restrictions with regard to his project. Mr. Leventhal claims that this is a reasonable accommodation that's required by Federal Law. The City Zoning Administrator reviewed the evidence, decided that it was not, and Mr. Leventhal's now

appealing this decision. Mr. Leventhal's alleging that the City acted illegally, right, the City deliberately decided to ignore the Federal Fair Housing Act and do something against that. That's a serious allegation, that's what we're here to talk about tonight. A couple of the things that we're not here to talk about tonight, we're not here to talk about whether or not the ordinances should be different or whether or not the height restrictions are a good idea. The City obviously believes those height restrictions are a good idea and that they're a very important part of creating this recognizable downtown. But we're not here to debate the wisdom of those ordinances or whether they're a good idea. We're also not here to complain about the development process, to get wrapped up in whether or not development has gone exactly as the applicant intends. What we're here to talk about is whether or not the City acted illegally in deciding to enforce the height restrictions that are plainly contained in the Code. The decision of the Zoning Administrator related to that and only that and you can see that from Mr. Allen's notice of appeal. The notice of appeal clearly explains the only issue here tonight is height. That there is no other issue in the City Center Zone, that is only the height restriction that is a problem. If you look at the last paragraph of his notice of appeal, he explains that. The simple question is does Federal Law require that he get the reasonable accommodation or not? And for the reasons that I'll explain, Federal Law does not require that accommodation and the City Zoning Administrator absolutely acted properly. So we're talking a lot about a reasonable accommodation. So what does that mean? A reasonable accommodation is an exception to the general rule. It's an exception for somebody, for an applicant, that everybody else wouldn't get. It's a change in the rule for a particular person in a particular circumstance. Now Federal Law requires that only when the accommodation is both necessary and reasonable to allow the disabled equal access to housing. Those two terms are very important. It's very important to know exactly what that means. Necessity is the most important by far. It means that it has to be absolutely required to give the accommodation in order to have housing for the disabled here. Not just that it's helpful to an applicant. Not just that it's beneficial. Not just that it's a good idea. But that it's absolutely necessary to allow the disabled to live in this zone. If the disabled can live in the zone without the reasonable accommodation then the accommodation is not required as a matter of law. Now necessity doesn't mean that it's necessary for an applicant's particular project. It doesn't mean that an applicant can propose any project they want as long as it provides housing for the disabled and that you can then get any accommodation that's needed to make that project come to life. That's not what necessity means. What the Federal Courts have explained is that necessity means that it pertains to the use generally. That if you can have housing for the disabled in a zone without the accommodation, the accommodation is not required. So the classic example of a reasonable accommodation is something like a seeing eye dog for a blind person right? So an apartment complex has a no pet policy, a blind person needs a seeing eye dog to live there, and so the apartment complex gives an accommodation. That's the textbook reasonable accommodation. Now what isn't a reasonable accommodation? It's not a reasonable accommodation just because it's for the disabled. It's not a reasonable accommodation just because a disabled person is asking for it or because it might benefit the disabled in some way. It has to be necessary to allow access to housing in that zone. Not only that, it's not a reasonable accommodation just because it would make it more profitable or easier for an investor to construct housing for the disabled. That doesn't make for a reasonable accommodation either. A reasonable accommodation has to be required to have any kind of housing for the disabled and what Mr. Allen has explained in his notice of appeal is that the appellant's only issue here is the height requirement. 2 stories. A 2 story assisted living facility is economically viable, anything else is not, is

Mr. Allen's position and we'll talk about that and explain why it is that that's not necessary. So with that in mind let's talk a little bit about why we're here today. It's the appellant's burden to demonstrate that the City acted illegally. It's the appellant's burden to demonstrate that the City violated the Federal Fair Housing Act by refusing to grant an accommodation and by enforcing the height restrictions that are applicable to everybody else. If it's possible under the ordinances to build housing for the disabled in the City Center Zone under the ordinances, the appellant loses. If the request is unreasonable, the appellant loses. And it's the appellant's burden to show the City acted illegally there. Once again, the only thing we're talking about here is the height requirement and that's really important going forward. I'm about to explain to you why it is that it can be done, why you can build housing for the disabled in the City Center Zone under these ordinances because you can, the accommodation's not necessary. And because the accommodation's not necessary, the Zoning Administrator acted properly. So the first reason that we know it's not necessary is because the applicant already has approval to construct an assisted living facility. The applicant notes this in his notice of appeal and explains this approval was granted on December 10<sup>th</sup> of last year to build an assisted living facility. Now let's talk a little bit about that approval and how we got to that point. The document submitted by Mr. Leventhal on his appeal, in specifically the conditional use analysis that's attached as an exhibit, indicates that for several years prior to this application, Mr. Leventhal's property was dilapidated, there was an office building that had fallen into disuse and disrepair and wasn't being maintained. This was a problem for a lot of reasons, obviously in our recognizable downtown area, in what we want to be the crown jewel of West Valley City, it's not a great look to have a facility that's falling apart, that serves as a magnet for vandalism, for criminal activity, for vagrancy. That's not a great situation. So what's gone on is over the years there have been several proposals to try and see if there's anything that can be done to redevelop this property in accordance with what you see happening all around us in the City Center Zone. What ultimately happens is that the City agrees to foot the majority of the bill to demolish the dilapidated building. The City contributed tens of thousands of dollars to Mr. Leventhal to get the building demolished. The City even bid the work out and had it done and paid the majority of the costs for it. This contribution of tens of thousands of dollars came with no strings attached. The City didn't require an exchange for that money, that Mr. Leventhal develop any particular type of project at all. The City didn't require that Mr. Leventhal give the City a park. The City didn't require anything. The City just offered the money because it was useful for the redevelopment in the area and because it was helpful to Mr. Leventhal and his efforts to get a good development on the property. Mr. Allen explains in his notice of appeal that his client had a market study done in 2013. We're going to talk a little bit more about that market study that he references and some of the issues that come up there. It's worth noting that in 2013, before the City agrees to foot the bill for the demolition, Mr. Leventhal has his market study. He says he has a market study that demonstrates a tremendous demand for assisted living facilities here in West Valley City. So he's go the market study, obviously he's interested in developing this thing that there's demand for. Now what does Mr. Leventhal do with that information? Well, he submits an application that complies with the ordinances. He submits an application for a 2 story assisted living facility within the hundred feet directly north of 3650 south and for a 5 story facility beyond that. Complies with the ordinances. Based on a study. Seems like there's no trouble. Of course there is no trouble. The application is approved. The application is approved without conditions as to Mr. Leventhal giving the City any property for a park, that's never discussed. In fact the minutes which I will provide for you right now. The minutes of that meeting, I think we have



those... While we locate those I'll talk a little bit more about that issue right. The minutes of the conditional use approval demonstrate clearly that there's absolutely nothing that the City requires in terms of a park or any kind of contribution of property. In fact the minutes say that if the City's going to get a park, it's going to pay for it and it's going to pay fair market value. That's what the minutes say. That's a matter of public record that's available for everybody. So what we have there is an approved facility for Mr. Leventhal to build exactly what he applied to build. As a City, generally speaking, at that point we think okay we're in great shape. We approved the application, what problem could there be? And that approval and those minutes are going to demonstrate some really important things as well, some things that are very important to understanding the arguments that Mr. Allen has made here. First of all, those minutes indicate that that application was not a slap dash decision. What Mr. Leventhal's representative says is those plans were extensively evaluated, extensively modified to meet both City requirements and the applicant's vision for the property. So we know that this wasn't something that was half baked. It was based on the market study that Mr. Leventhal said he had. We also see nowhere on the record any concerns about safety or economic viability with regard to that application. After all, it's Mr. Leventhal's application, you would expect it would comport with his standards as far as economic viability and as far as the safety component. In fact what you're also going to see is that the applicant refers a parking question on the site to the State Board of Health who reviews the plans and says ya we can recommend you have a little bit lower parking level than many similar facilities. So the State Board of Health looks at it, the applicant submits it, nowhere on the record do we see any mention of any safety problems or any safety concerns that the applicant has at all. The Planning Commission was enthusiastic about this project. They said this is great, an assisted living facility here in the City Center Zone, this is our recognizable downtown, we're going to get a nice dense development here that accommodates the disabled, that accommodated memory care, it jives with transit. Everything's great. There's no appeal that Mr. Leventhal submits of his approval which makes sense since he got exactly what he wanted. His application was approved. Everything's great. But now what Mr. Leventhal tells us is that the application that he made, that he applied for, isn't something he can build anymore. He says it's not just because he wants to build a cheaper building, he says it's not just because he wants a bigger profit margin. He says it's because you can't build one of these things and it can't be viable over two stories. You absolutely can't do it. 2 stories is viable. Anything more than 2 stories is not viable. Now the first thing I would tell you about that is that you might want to ask the folks at the Emeritus in Salt Lake City whether or not you can have an assisted living facility that's over 2 stories. This assisted living facility's well over 2 stories and it's probably the premier facility in the Salt Lake Valley. We know empirically as we go up and down the Wasatch Front we see numerous facilities that are more than 2 stories. But the other reason that this is pertinent and the other reason that's important to keep that argument squarely in mind is because the ordinance actually allows Mr. Leventhal to build a 2 story assisted living facility on his property. What the ordinance provides is that, as Mr. Allen explained, the ordinance provides that within the first 100 feet north of 3650 South you can build a 2 story facility. In fact it can't be higher than 3. It has to be 2 or 3 stories within that area. And what Mr. Allen explains to you tonight is that it's viable if it's 2 stories. That's the only issue we're here talking about. So what the City would say is very well. Build a 2 story facility in accordance with the ordinance, it's economically viable, and the accommodation simply isn't needed. You can have that facility right now for the asking under the ordinances. What Mr. Leventhal's saying is that well it's true that there can be a facility but not exactly the facility that I want to design.

That's not an issue of reasonable accommodation and it's not an issue under the Federal Fair Housing Act. As Mr. Allen admits, you can do this, right there, right to the north of 3650 S. So if 2 story facilities are viable, Mr. Leventhal just has to build the building just to the north of 3650 S, problem solved. No accommodation necessary. Certainly no need for park property. The ordinance allows him to build it right there. And of course this is the reason that Mr. Leventhal's not entitled to that accommodation. If he wants to build according to his original approval, he can do that. He can do that right now. Today. If he wants to build in accordance with this 2 story facility that's the only kind that's economically viable? He can do that. He just has to do that according to the rules that are set forth there. And what Mr. Allen explains tonight is that's economically viable because it's 2 stories. So what's left for Mr. Leventhal? He was approved when he applied for the 2 story and 5 story combination. If he can only afford to build a 2 story building on the property the ordinance allows him to do that too. But he says he's entitled to ignore all of those restrictions and do whatever it is he wants to do because he's got a market study. Let's talk about that market study. Now first of all that market study's not on the record before you. We don't have it. The City's never received it. You haven't received it. Hasn't been offered to you tonight. If you look at Mr. Allen's notice of appeal, what you're going to see is that he actually stipulates there that he doesn't want to provide it for confidentiality reasons, that it's secret information that he can't disseminate to you. And so he's telling you that you have to trust and accept the findings of a study that he won't give you. Ok? So that's problematic. I'm certainly no accountant but if I wanted to submit a tax return with receipts that I couldn't show the IRS and say well I promise you there's a business deduction in there somewhere, I just can't show you the receipts. That's going to be a problem. That doesn't even matter because Mr. Allen's notice of appeal explains that all the study has to do, all the study does is show that he needs a 2 story building. He's got to have a 2 story building. There's a number of issues there. Number 1, he can build that under the ordinance. We've talked about that. Number 2, he got that study in 2013 and then submitted an application for a 5 story building in 2014. So tell me what's wrong with that picture? The Study that says that it's not viable, can't do it, it's got to be 2 stories, nothing else. But then the applicant submits a 5 story application. K? So that really disposes of the need to talk about the study any further. There are a few more facts that are worth noting about that. Mr. Leventhal doesn't claim that the study addresses all possible facilities. What he says is the study says the 5 story facility's not viable and a 2 story facility is. It doesn't address the option of constructing a 2 story facility that's within the ordinance. It doesn't address the option of building a bigger facility that can get them more revenue. Generally speaking, and you all are pretty experienced in this, developers want more density. Want to get more revenue. Want to rent out more units. Mr. Leventhal doesn't even claim that the study offers, examines that alternative. Doesn't even look at it. Doesn't look at any option except 5 story not viable and 2 story is viable. It's like looking at airline ticket prices and you check out Delta and it turns out they're too expensive so you immediately decide that you can't afford to travel by air. Well that doesn't follow. There are lots of other airlines. You've got to check all the prices and Mr. Leventhal doesn't even allege the study does that. As I noted, he has the study in hand then he chooses to apply for the 5 story building a year later. How does that make sense? What's the motivation to do that? If it's really not viable, why would you apply for that? Why wouldn't you ask for the accommodation in 2014? And if you feel like the Planning Commission wronged you in some way by approving your application why wouldn't you appeal then? We know that throughout the Salt Lake Valley there are several assisted living facilities that are more than 2 stories high. We don't have to speculate about whether or not

that's viable because we see them everywhere. The Emeritus is just one example of that. The Emeritus I think is hardly an institution, it's hardly a prison. It's a very well regarded assisted living facility. My co-counsel's grandmother actually resided in there until she unfortunately passed. It's a great facility and it's not 2 stories. Now it's really obvious as we go through all this that it's not necessary to have this exemption and because it's not necessary the reasonable accommodation doesn't have to be granted. But let's talk about the ordinance and why it's not reasonable either. Purpose of the ordinance is set forth very well in the conditional use analysis that is attached to Mr. Allen's notice of appeal. Sets forth the need to create a recognizable downtown, to prioritize transit oriented development, redevelopment around transit infrastructure, create the recognizable downtown, and promote architectural excellence. These are all things that are on the face of the ordinance, these are all things that appear in the conditional use analysis and in the letter denying the reasonable accommodation request. The height limitations are there and they're important to create a downtown atmosphere. The idea is that we want to create development that's vertical, that's more intense, that creates the image and the reality that downtown West Valley City is the place to be. Now there are other ways to do that as Mr. Allen observes, there are developments that have gotten a minor waiver. Not to 2 stories, to 4 stories, a 1 story reduction instead of 3 in the facility for Granger Medical Center as well as for the ICO Development. The ordinance also provides for that. The ordinance provides you the opportunity as the developer to reach a customized arrangement with the City to say hey the ordinance creates a recognizable downtown. Now you can comply with that and you get approved or if you've got your own idea, if you've got something that promotes the downtown that we're trying to create here, that meets those ordinances, propose a development agreement that varies from those strict letter of the ordinance but that meets that intent. And what you see is that developers will often build aggressively over the standards that we've set and go well beyond the minimum. For example, what the ICO Development did architecturally and in terms of the interior features, this is well beyond what the ordinance requires. And that's the reason that the City Council was willing to grant that minor reduction from 5 to 4 stories. That's very simple. The idea is you can help us create this downtown, bring us your vision and we'll look at it. I can definitely represent to you today that if Mr. Leventhal wants to build to the standards that ICO set, 4 story with all of those amenities, the City would be very excited about that. Now for an accommodation to be reasonable, what the Federal Courts tell us is that the reasonable accommodation has to address the concerns that prompt the ordinance. We can't just ignore those concerns, we can't just say well it's for the disabled so the ordinance and the intent doesn't matter anymore. Federal Courts have rejected that argument. What they've told us is that you've got to accommodate that somehow in the reasonable accommodation and work toward that goal anyway and there's nothing in the notice of appeal that shows how that happens, okay? So it's not surprising the appellant gives short shrift to those goals, we see that all the time. Lots and lots of people tell us great development can't happen in West Valley City. Don't ask Granger Medical. Don't ask the Embassy Suites. Don't ask ICO. These are sophisticated developers. They know how to build a high quality product and they know how to make a buck too. So we're used to hearing that. Can't do that in West Valley. This is just another iteration of that argument. But the appellant goes so far as to tell you that we don't even care whether it meets the height requirements or not. We don't even care about the standards in the City Center Zone just because we're trying to get a park out of them. There are a number of reasons you know that's not true. Number 1, we gave the appellant tens of thousands of dollars in exchange for no commitments at all. Is that compatible with an attempt to get a park for

nothing? Number 2, we stated on the record that we would pay market value for a park if and when the City decides that it's necessary. As the reasonable accommodation denial letter says, we're looking at redesigning the park anyway. So we know that this is absolutely not true and more to the point we know that the appellant had no compunctions at all about the City's commitment to redevelopment when he accepted the tens of thousands of dollars that we offered to demolish the dilapidated structure over there. There's nothing at all on the notice of appeal that shows how this furthers the purpose of the ordinance and that's why it's unreasonable and that's why this gets denied. Once again, it's the appellant's burden to show that housing for the disabled is impossible without the accommodation he wants. He has not come close to carrying that burden. 5 stories, 2 stories, or in between, the City ordinances offer the opportunity to develop housing for the disabled. The applicant admits that this would be economically feasible, the 2 story facility right off 3650 would be feasible and he just doesn't want to comply with that. And as an excuse for why he doesn't want to comply he tells us we have to accommodate the disabled but the ordinance accommodates the disabled perfectly well. This appeal ultimately isn't about what's best for the disabled, the ordinance provides for that. We approved a large project for the disabled. This appeal is about what's best for the financial interest of Mr. Leventhal. He may want exceptions but he doesn't need them. That's why the City's decision was correct and that's why you should uphold it. Do you have any questions? Thank you.

**Richard Allen**

I'd like to respond to a number of things raised by the City. First of all, we're talking about height restrictions and he's gone into history that wasn't really part of the application but the one thing that he leaves out is that the Leventhal Trust did ask for a 2 story facility on this property in September of 2014 which was rejected by staff. Staff provided you copies of the information they did, they said look it doesn't comply with the 5 story requirement but we can waive that requirement. And it... you know... despite what the City's telling you, it's pretty clear to me they offered to waive the 5 story requirement if we would give them property for the park. The people involved representing the Leventhal Trust will testify that was clearly and specifically asked for on multiple occasions and offered. And so their willing to do it for that purposed I think it establishes that it's not a critical thing. The City also talks about the report that is referred to which was a market demand feasibility report and what that report provided is that there would be demand for property but it had to fit in this economic criteria. What it did was it evaluated the economic stages of people in the area and determined this is what people could pay. I did offer, in the application, to allow people to review that. We didn't want to make it part of the public record but there is clearly an offer to allow the City to review that. Actually subsequently I obtained approval from the consultant to provide that information but in the Zoning Administrators decision, she did not address at all the economic issues. So for him to stand up and argue economics when they were not part of the decision, an analysis was not part of the decision, I think is clearly inappropriate. If the way this process had worked and you know, quite frankly, in my experience, we go through this process preliminary to filing a litigation. We do that because we want to establish a record that the court relies on and if we provide economic information, the City doesn't respond to that economic information, doesn't ask for it, doesn't analyze it, then we assume it stands. They did not raise one economic issue in the Zoning Administrator's decision. She completely ignored that information so for them to argue it now is clearly inappropriate. For them to argue it now, is clearly inappropriate. If they'd want to file a report

and give us a chance to respond to it, then we would have done that. We could have provided this report, we got subsequent clearance to do that. That's not what the Zoning Administrator did. The Zoning Administrator blew off all of the economic analysis and therefore the record stands as what we provided that was not questioned, was not raised at all in the decision to turn down our request for reasonable accommodation. I don't understand exactly what he's saying, he's saying we could build a 2 story building right now. I assume he means if you put it between the 20 foot setback and the 100 feet so you know if you can a real narrow building that doesn't use your property, you can build it now. But that's not an economic use of the facility and again that issue wasn't raised. The way this process is supposed to work is you submit your reasons that you believe your project requires this accommodation. If they don't agree with your analysis, if they think it's faulty, then they address that. They challenge it so we get a chance to respond to that. They don't do that. They just blow it off and ignore and then he shows up here and wants to argue it now and he wants to make like we're being tricky and sneaky with our report. Our report had a clear thing that we couldn't disclose it as I set out in my application. I said we would allow people to look at it. Subsequently, assuming possibly that we would be asked to provide it, I've obtained to permission to obtain it. It's not being offered here part of the record because it was never raised at all one iota by the City in challenging and denying our reasonable accommodation. The other... and that analysis did not go in on whether a 5 story or whatever. That analysis, and I think that's all I represented it did, it was stated that the demand would be there for this facility if you could provide services within a realm that could be afforded by the people in the area. That's what that analysis said. It didn't go into all these other things. The applicant originally asked for a 2 story, when it was turned down, he applied for a 5 story and there was a question between the Trust and the consultants as to how much the Trust was involved and I'm not going to get into that issue. They asked and I think this is pretty reasonable, I've been a City Attorney and I've been involved in development and a lot of times developers come in and ask for approval of this project and then they go see if they can make it work. And that's what happened in this case. They decided well if they're going to turn down our 2 story, let's see if we can make a 5 story building work. But you don't go out and spend a million dollars to go through detailed design and analysis for a project you don't know if can be approved. They went and said ok will you approved it if it complies with the standards and so the City did. And so then they start doing the detailed design and when they do that, it becomes very clear that it's not economically viable and that is the reason that this request was filed. And I think I've... on the reasonable accommodation or on the necessity, there are a lot of cases on this and some of these cases deal with okay the City wants to approve six but it takes twelve to be profitable. In a case that involved West Valley City, the City turned down a reasonable accommodation and that was appealed to the court and the court indicated that the City violated the ordinance by not granting a reasonable accommodation. Not the ordinance but violated the Federal Fair Housing Act. In that case, the proposed facility, which was for drug and alcohol rehabilitation, was the property was being offered by the Church and it was being offered on favorable terms. Therefore the accommodation was allowed on that property, even though it was not zoned for that type of use, was necessary because that facility couldn't be economically viable anywhere else in the City. I think that clearly demonstrates that what we're saying here is to have an economically viable facility, now what we've provided information on which was never questioned until this hearing tonight, we think that information showed that the economic necessity required approval of the facility. Like I say, that was

never addressed at all prior to this hearing and I don't think it can be addressed here because it doesn't give us a reasonable chance to respond. Thank you.

**Necia Christensen**

Does the City have a rebuttal?

**Brandon Hill**

Very briefly. I've got those minutes that I referenced earlier and I'll provide a copy of those for Mr. Allen as well. Those were referenced in his materials as well. These are all part of the public record as well. There's just a couple issues that I want to address. I think most of those issues we addressed previously and I don't want to go back over that ground again. But there's really two issues that I want to talk about and the first is this notion that we just don't ever look at the economic issue before, that it's just brand new here tonight. There are a number of reasons why you shouldn't credit that argument. First of all, it's not the City's burden. It's the appellant's burden to show that the City is acting illegally and it's the appellant's burden to demonstrate that he is entitled to a reasonable accommodation. He's got to provide that evidence. How can we respond to it if we don't have it? That's pretty simple. The other issue here is that this is a public proceeding. We're here publicly on the record. Everything I say is a matter of public record. The public's entitled to know. To say that while we've got some evidence but it's under a confidentiality agreement we'll let you look at it isn't reasonable, it doesn't put it on the record and as Mr. Allen indicates that's a very important thing that be on the record, that's not a trifling matter. Think about what Mr. Allen's asking us to do. He says here you can look at it but it's under a confidentiality agreement so you can't talk about it publically. So if there's a problem with the study, I can't bring it up here because now I've violated the confidentiality agreement. You see the double bind there right? So it's the appellant's burden to produce that. That didn't happen and it still hasn't happened. Moreover, if you look at the ordinance and look at Mr. Allen's own submission, it's plain and clear from both the ordinance and from Mr. Allen's notice of appeal that you can build a two story facility in the hundred feet adjacent to 3650 S and the reason we know that is that Mr. Leventhal himself applied to do just that. Clearly that wasn't a new issue to anybody. Clearly that's the facility that Mr. Allen's telling you here tonight is economically viable. So let's build it. As for the West Valley City Episcopal Church case that Mr. Allen points out, that case, in addition to being 15 years ago, is very, very different than the case at hand. In the 2000 case the facility, the approval to operate the group home was denied. Here it was approved. That's the most fundamental difference there is. Denied. Approved. We approved the facility. We approved the application. In that case the application was not approved. Big difference. Number two, we allowed more units here. In that case the issue was overcrowding and there's too many people and you can't do that and there's a denial of the application. Here we approved a facility with more units than even Mr. Allen and Mr. Leventhal are telling you now that they want. We don't want less housing for the disabled. We want more. 5 stories, 6 stories, 7 stories? Great. That's exactly what we want and that's a very different situation from that other case. And the third and most important reason is that here there are lots of economically viable ways to accomplish the goal which even the appellant acknowledges are economically viable. And that case it was alleged that there was only one way of getting it done and that was the only option available. Not only does the study that they reference not even allege that they do that, but we've demonstrated here tonight

there's plenty of economically viable ways to do it, even by the appellant's own standard and that's the important thing for you to take here with you tonight. Even by the appellant's own standard, there are economically viable ways to have housing for the disabled in the City Center Zone in West Valley City. We designed the ordinance to be accommodating to development. It is accommodating to development, look all around you and you see why. That's why you've got to uphold our decision.

**Necia Christensen**

Yes sir?

**Richard Allen**

I think the claim that we've acknowledged that it would be viable to build a two story building is not true. He's come here today to say if you put it between the 20 foot setback and 100 feet or an 80 foot deep building... you're permitted to do that. Well we've never looked at trying to build a little skinny building that only uses less than 1/3 of our property. I think that would be right. We looked at a viable use of our property which would be a larger facility that would extend back beyond 100 feet. So to say we've admitted that a 2 story facility between 20 foot setback and 100 feet we've acknowledged that's viable, that's absolutely not right. To argue that facility that was approved is what we're talking about is wrong. What we're asking for is an accommodation for a facility we want to build after we've determined that the one that was approved cannot be built. Economically viable. That's where we're at. Thank you.

**Necia Christensen**

Alright. I'm going to close our discussion and I'll entertain a motion.

**Russell Moore**

I'll make a motion madam chairman. I make a motion that adjourn this meeting and take the information we've received under advisement and continue for further review by the parties that conduct further deliberations.

**Scott Spendlove**

I'll second that.

**Necia Christensen**

So the motion is to adjourn the meeting at this point and take into consideration all of the documents that we've received, the documents that have been provided by us at this point. I see that our council... do you have something you'd like to say? Ok. That is the motion. Any discussion?

**Scott Spendlove**

No I mean it'd be good to see what the... I'd like to see the minutes as they were initiated by the City.

**Necia Christensen**

Alright. That being said. Let's take a vote.

**Nichole Camac**

Mr. Spendlove- Yes

Mr. Whetstone- Yes

Mr. Moore- Yes

And Chairperson Christensen- Yes

The motion to adjourn has been approved.

**OTHER**

The minutes from **July 1, 2015** were **continued**.

There being no further business the meeting adjourned at 7:37 p.m.

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Nichole Camac, Administrative Assistant